IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

H.C.P.No.594 of 2006

Kumar @ Kullan .. Petitioner

-vs-

1. The Commissioner of Police,
   Greater Chennai,Egmore,
   Chennai 600 008.

2. The State of Tamil Nadu,
   rep. by its Secretary to Government,
   Prohibition and Excise Department,
   Fort St.George,
   Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records in connection with the order of detention passed by the first respondent dated 5.4.2006 in Memo No.98/2006, Kumar @ Kullan, S/o Chinnathambi, aged 28 years, who is now confined at Central Prison, Chennai and set aside the same and direct the respondents to produce him before this Court and set him at liberty forthwith.

For Petitioner : Mr.K.Manojkumar

For Respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14, 1982), by the impugned detention order dated 05.04.2006, challenges the same in this petition.

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2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

3. At the foremost, learned counsel for the petitioner, after taking us through the detention order, the grounds of detention and the contents of the same, submitted that the impugned order of detention is liable to be quashed on the ground of non-application of mind on the part of the detaining authority. Elaborating the above submission, learned counsel for the petitioner has brought to our notice that there is inconsistency with reference to the date of the passing of the detention order. In the English version of the detention order it is shown that the detention order came to be passed on 05.04.2006. However, after signing of the order, on the left hand side it is specifically mentioned that "Given under my hand and seal of this office the 5th day of March 2006". No doubt, the round seal affixed therein shows that the detention order was passed on 05.04.2006. In the Tamil version of the detention order, it is correctly stated as 05.04.2006. However, in the grounds of detention, both in the English version and Tamil, it is specifically stated as 05.03.2006. In addition to the same, a perusal of the details mentioned in the grounds would show that there is no consistency in mentioning the date of detention order. After narrating nine adverse cases, while considering the ground case in paragraph No.2, the detaining authority has specifically stated that a detention order under Section 3(1) of Act 14 of 1982 has been made against Kumar @ Kullan vide order No.98/2006 dated 05.03.2006. In the same way, the detaining authority has mentioned and proceeded as if the detention order was passed only on 05.03.2006. It is evident even from the Tamil version of the grounds of detention.

4. No doubt, in the reply dated 07.07.2006 with reference to the representation of the detenu dated 22.06.2006, the Government have stated that it is a typographical error. In view of the discrepancy in several places as pointed above, we are not inclined to accept the said reply. In fact, no explanation has been given by way of an affidavit how the mistake occurred in several places. As rightly pointed out by the learned counsel for the petitioner, the discrepancy with reference to the passing of the detention order clearly shows the non application of mind on the part of the detaining authority. On this ground, we are satisfied that the detention order is to be quashed, Though we are conscious of the fact that the detenu had several cases to his credit, because of the fact that more attention was not drawn or adhered to at the time of passing of the detention order, we have no other option except to

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interfere with the same. Consequently, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case or cause.

gms

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1.The Commissioner of Police, Greater Chennai,Egmore,Chennai 600 008.

2.The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department,Fort St.George, Chennai 600 009.

3.The Superintendent,Central Prison, Chennai.

4.The Joint Secretary to Government, (Public (Law and Order),Fort St.George, Chennai-9.

5.The Public Prosecutor, High Court, Madras-104.

+ one cc to Mr.K.Manoj Kumar, Advocate Sr.No.39051.

PV (CO)
RSM/5.9.2006

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